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JANET SECCO

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JANET SECCO,	)	CASE NO. 2:20-cv-00426-KJM-CKD
	)	
Plaintiff,	)	<b>STIPULATED PROTECTIVE</b>
	)	<b>ORDER</b>
vs.	)	
	)	
THE STANDARD INSURANCE COMPANY,	)	<b>DISCOVERY MATTER</b>
	)	
Defendant	)	

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1           1.       A.       PURPOSES AND LIMITATIONS

2           The proposed discovery in this action includes plaintiff Janet Secco's intent to seek  
 3 production of confidential, proprietary, or private information, which The Standard Insurance  
 4 Company ("Standard") contends is entitled to special protection from public disclosure and from  
 5 use for any purpose other than prosecuting this litigation. Accordingly, the parties hereby  
 6 stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties  
 7 acknowledge that this Order does not confer blanket protections on all disclosures or responses  
 8 to discovery and that the protection it affords from public disclosure and use extends only to the  
 9 limited information or items that are entitled to confidential treatment under the applicable legal  
 10 principles. The parties further acknowledge, as set forth in Section 12.3, below, that this  
 11 Stipulated Protective Order does not entitle them to file confidential information under seal;  
 12 Local Rules 140 and 141 set forth the procedures that must be followed and the standards that  
 13 will be applied when a party seeks permission from the court to file material under seal and/or  
 14 redact material as to which confidentiality is asserted.

15                   B.       GOOD CAUSE STATEMENT

16           Discovery activity in this action are likely to involve production of confidential,  
 17 proprietary, or private information of Standard, for which special protection from public  
 18 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.  
 19 It is expected that the discovery may include certain confidential and proprietary business  
 20 information and documents from Standard. Accordingly, the parties hereby stipulate to and  
 21 petition the court to enter the following Stipulated Protective Order. The parties acknowledge  
 22 that this Order does not confer blanket protections on all disclosures or responses to discovery  
 23 and that the protection it affords from public disclosure and use extends only to the limited  
 24 information or items that are entitled to confidential treatment under the applicable legal  
 25 principles.

26           2.       DEFINITION

27                   2.1       Action: the above captioned pending federal law suit.

28                   2.2       Challenging Party: a Party or Non-Party that challenges the designation of

1 information or items under this Order.

2 2.3 “CONFIDENTIAL” Information or Items: Information (regardless of  
3 how it is generated, stored or maintained) or tangible things that qualify for protection under  
4 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

5 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their  
6 support staff).

7 2.5 Designating Party: a Party or Non-Party that designates information or  
8 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

9 2.6 Disclosure or Discovery Material: all items or information, regardless of  
10 the medium or manner in which it is generated, stored, or maintained (including, among other  
11 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures  
12 or responses to discovery in this matter.

13 2.7 Expert: a person with specialized knowledge or experience in a matter  
14 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert  
15 witness or as a consultant in this Action.

16 2.8 House Counsel: attorneys who are employees of a party to this Action.  
17 House Counsel does not include Outside Counsel of Record or any other outside counsel.

18 2.9 Non-Party: any natural person, partnership, corporation, association, or  
19 other legal entity not named as a Party to this action.

20 2.10 Outside Counsel of Record: attorneys who are not employees of a party to  
21 this Action but are retained to represent or advise a party to this Action and have appeared in this  
22 Action on behalf of that party or are affiliated with a law firm that has appeared on behalf of that  
23 party, including support staff.

24 2.11 Party: any party to this Action, including all of its officers, directors,  
25 employees, consultants, retained experts, and Outside Counsel of Record (and their support  
26 staffs).

27 2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
28 Discovery Material in this Action.

2.13 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.14 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL.”

2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

### 3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

Any use of Protected Material at trial shall be governed by the orders of the trial judge. This Order does not govern the use of Protected Material at trial.

### 4. DURATION

Once a case proceeds to trial, all of the information that was designated as confidential or maintained pursuant to this protective order becomes public and will be presumptively available to all members of the public, including the press, unless compelling reasons supported by specific factual findings to proceed otherwise are made to the trial judge in advance of the trial. *See Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing “good cause” showing for sealing documents produced in discovery from “compelling reasons” standard when merits-related documents are part of court record).

Accordingly, the terms of this protective order do not extend beyond the commencement of trial.

### 5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the

appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber the case development process or to impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the inapplicable designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced. The parties hereby stipulate and agree that all of Plaintiff's health information, including all diagnosis, shall be automatically designated as confidential notwithstanding any marking of the document confidential. This includes, but is not limited to, any mention of Plaintiff's private health information.

Designation in conformity with this Order requires:

(a) for information in documentary form (*e.g.*, paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix, at a minimum, the legend "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins).

A Party or Non-Party that makes original documents available for inspection need not designate them for protection until after the inspecting Party has indicated which documents it would like copied and produced. During the inspection and before the designation, all of the

material made available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings on the document).

(b) for testimony given in depositions that the Designating Party identify the Disclosure or Discovery Material on the record, before the close of the deposition.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information is stored the legend “CONFIDENTIAL.” If only a portion or portions of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

## 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court’s Scheduling Order.

6.2 Meet and Confer. The Challenging Party shall initiate the Court’s discovery dispute resolution process and reference this protective order in its notice.

6.3 Burden. The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the

1 confidentiality designation, all parties shall continue to afford the material in question the level  
2 of protection to which it is entitled under the Producing Party's designation until the Court rules  
3 on the challenge.

4 7. ACCESS TO AND USE OF PROTECTED MATERIAL

5 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
6 disclosed or produced by another Party or by a Non-Party in connection with this Action only for  
7 prosecuting, defending, or attempting to settle this Action. Such Protected Material may be  
8 disclosed only to the categories of persons and under the conditions described in this Order.  
9 When the Action has been terminated, a Receiving Party must comply with the provisions of  
10 section 13 below (FINAL DISPOSITION).

11 Protected Material must be stored and maintained by a Receiving Party at a  
12 location and in a secure manner that ensures that access is limited to the persons authorized  
13 under this Order.

14 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
15 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may  
16 disclose any information or item designated "CONFIDENTIAL" only to:

17 (a) the Receiving Party's Outside Counsel of Record in this Action, as well as  
18 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
19 information for this Action;

20 (b) the officers, directors, and employees (including House Counsel) of the  
21 Receiving Party to whom disclosure is reasonably necessary for this Action;

22 (c) Experts (as defined in this Order) of the Receiving Party to whom  
23 disclosure is reasonably necessary for this Action and who have signed the "Acknowledgment  
24 and Agreement to Be Bound" (Exhibit A hereto);

25 (d) the Court and its personnel;

26 (e) court reporters and their staff;

27 (f) professional jury or trial consultants, mock jurors, and Professional

28 Vendors to whom disclosure is reasonably necessary for this Action and who have signed the

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1 “Acknowledgment and Agreement to Be Bound” (Exhibit A hereto);

2 (g) the author or recipient of a document containing the information or a  
3 custodian or other person who otherwise possessed or knew the information;

4 (h) during their depositions, witnesses, and attorneys for witnesses, in the  
5 Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that  
6 the witness sign the form attached as Exhibit A hereto; and (2) they will not be permitted to keep  
7 any confidential information unless they sign the “Acknowledgment and Agreement to Be  
8 Bound” (Exhibit A hereto), unless otherwise agreed by the Designating Party or ordered by the  
9 Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected  
10 Material may be separately bound by the court reporter and may not be disclosed to anyone  
11 except as permitted under this Stipulated Protective Order; and

12 (i) any mediator or settlement officer, and their supporting personnel,  
13 mutually agreed upon by any of the parties engaged in settlement discussions.

14 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
15 OTHER LITIGATION

16 If a Party is served with a subpoena or a court order issued in other litigation that compels  
17 disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that  
18 Party must:

19 (a) promptly notify in writing the Designating Party. Such notification shall include a  
20 copy of the subpoena or court order;

21 (b) promptly notify in writing the party who caused the subpoena or order to issue in  
22 the other litigation that some or all of the material covered by the subpoena or order is subject to  
23 this Protective Order. Such notification shall include a copy of this Stipulated Protective Order;  
24 and

25 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
26 Designating Party whose Protected Material may be affected.

27 If the Designating Party timely seeks a protective order, the Party served with the  
28 subpoena or court order shall not produce any information designated in this action as



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1 “CONFIDENTIAL” before a determination by the court from which the subpoena or order  
2 issued, unless the Party has obtained the Designating Party’s permission. The Designating Party  
3 shall bear the burden and expense of seeking protection in that court of its confidential material  
4 and nothing in these provisions should be construed as authorizing or encouraging a Receiving  
5 Party in this Action to disobey a lawful directive from another court.

6 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED  
7 IN THIS LITIGATION

8 (a) The terms of this Order are applicable to information produced by a Non-Party in  
9 this Action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in  
10 connection with this litigation is protected by the remedies and relief provided by this Order.  
11 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking  
12 additional protections.

13 (b) In the event that a Party is required, by a valid discovery request, to produce a  
14 Non-Party’s confidential information in its possession, and the Party is subject to an agreement  
15 with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

16 (1) promptly notify in writing the Requesting Party and the Non-Party that some or  
17 all of the information requested is subject to a confidentiality agreement with a Non-Party;

18 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in  
19 this Action, the relevant discovery request(s), and a reasonably specific description of the  
20 information requested; and

21 (3) make the information requested available for inspection by the Non-Party, if  
22 requested.

23 (c) If the Non-Party fails to seek a protective order from this Court within 14 days of  
24 receiving the notice and accompanying information, the Receiving Party may produce the Non-  
25 Party’s confidential information responsive to the discovery request. If the Non-Party timely  
26 seeks a protective order, the Receiving Party shall not produce any information in its possession  
27 or control that is subject to the confidentiality agreement with the Non-Party before a  
28 determination by the Court. Absent a court order to the contrary, the Non-Party shall bear the

burden and expense of seeking protection in this Court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the Court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

1                   12.3    Filing Protected Material. A Party that seeks to file under seal any  
 2 Protected Material must comply with Local Rules 140 and 141. Protected Material may only be  
 3 filed under seal pursuant to a court order authorizing the sealing of the specific Protected  
 4 Material at issue. If a Party's request to file Protected Material under seal is denied by the Court,  
 5 then the Receiving Party may file the information in the public record unless otherwise instructed  
 6 by the Court.

7                   13.    FINAL DISPOSITION

8                   After the Final Disposition of this Action, as defined in paragraph 4, within 60 days of a  
 9 written request by the Designating Party, each Receiving Party must return all Protected Material  
 10 to the Producing Party or destroy such material. As used in this subdivision, "all Protected  
 11 Material" includes all copies, abstracts, compilations, summaries, and any other format  
 12 reproducing or capturing any of the Protected Material. Whether the Protected Material is  
 13 returned or destroyed, the Receiving Party must submit a written certification to the Producing  
 14 Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that  
 15 (1) identifies (by category, where appropriate) all the Protected Material that was returned or  
 16 destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts,  
 17 compilations, summaries or any other format reproducing or capturing any of the Protected  
 18 Material. Notwithstanding this provision, counsel are entitled to retain an archival copy of all  
 19 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,  
 20 correspondence, deposition and trial exhibits, expert reports, attorney work product, and  
 21 consultant and expert work product, even if such materials contain Protected Material. Any such  
 22 archival copies that contain or constitute Protected Material remain subject to this Protective  
 23 Order as set forth in Section 4 (DURATION).

24                   14.    Any violation of this Order may be punished by any and all appropriate measures  
 25 including, without limitation, contempt proceedings and/or monetary sanctions.

26                   ///

27                   ///

28                   ///

1 IT IS SO STIPULATED BY THE UNDERSIGNED PARTIES, THROUGH THEIR  
2 RESPECTIVE COUNSEL OF RECORD.

3  
4 Dated: June 25, 2020

/s/ Raquel M. Busani (as authorized on 6.25.20)  
Robert J. Rosati  
Raquel M Busani  
Attorney for Plaintiff  
JANET SECCO

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6  
7 Dated: June 25, 2020

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9  
10 By /s/ Rebecca A. Hull  
Jordan S. Altura  
Rebecca A. Hull  
Attorneys for Defendant  
STANDARD INSURANCE COMPANY

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**ORDER**

IT IS SO ORDERED, with the following amendments and clarifications:

1. The parties shall comply with the provisions and procedures of Local Rules 140 and 141 with respect to sealing or redaction requests. To the extent that the parties' stipulation conflicts with the Local Rules, the Local Rules shall govern.

2. Prior to filing any motion related to this stipulated protective order or other discovery motion, the parties shall first exhaust informal meet-and-confer efforts and otherwise comply with Local Rule 251.

3. Nothing in this order limits the testimony of parties or non-parties, or the use of certain documents, at any court hearing or trial—such determinations will only be made by the court at the hearing or trial, or upon an appropriate motion.

4. Pursuant to Local Rule 141.1(f), the court will not retain jurisdiction over enforcement of the terms of this stipulated protective order after the action is terminated.

Dated: July 13, 2020



CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

17.426.spo

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued on \_\_\_\_\_, 2020 in the case of *Janet Secco v. The Standard Insurance Company*, U.S. District Court for the Eastern District of Sacramento, Case No. 2:20-cv-00426-KJM-CKD. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Eastern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and telephone number]  
as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_